

**§ IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STEPHEN WHITT,

Petitioner,

v.

**WARDEN, LEBANON
CORRECTIONAL INSTITUTION,**

Respondent.

CASE NO. 2:12-CV-731

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth P. Deavers

OPINION AND ORDER

On June 26, 2014, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed on the grounds that Petitioner had failed to establish cause and prejudice for his procedural defaults or that his claims otherwise failed to provide a basis for relief. Petitioner has filed an objection to the Magistrate Judge's *Report and Recommendation* and a motion to appoint counsel. He objects to the Magistrate Judge's recommendation of dismissal. He again asserts that he is actually innocent and the victim of a manifest miscarriage of justice. The record, however, fails to support this allegation.

Petitioner presents no new evidence not previously available indicating that this case is of the "extraordinary nature" justifying a merits review of his otherwise procedurally defaulted claims. *Souter v. Jones*, 395 F.3d 577, 590 (6th Cir. 2005)(citing *Schlup v. Delo*, 513 U.S. 298, 316 (1995)). Further, to the extent that Petitioner raises an independent or free-standing claim of actual innocence, such claim does not provide him relief. *Herrera v. Collins*, 506 U.S. 390, 401 (1993)("Few rulings would be more disruptive of our federal system than to provide for federal

habeas review of freestanding claims of actual innocence”); *see also House v. Bell*, 547 U.S. 518, 554-55 (2006)(declining to resolve the issue).

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. Petitioner’s objection (Doc. 56) is **OVERRULED**. Petitioner’s motion for appointment of counsel (Doc. 57) is **DENIED**. The *Report and Recommendation* (Doc. 50) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

Date: August 7, 2014

s/James L. Graham
James L. Graham
United States District Judge